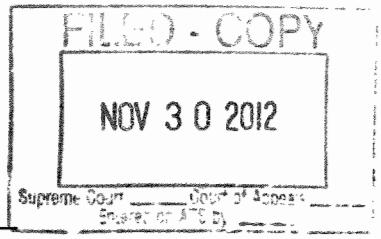
11-30-2012

State v. Petersen Appellant's Brief Dckt. 39643

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	NO. 39643
	)	
vs.	)	
	)	
CONRAD WALTER PETERSEN,	)	
	)	
Defendant-Respondent.	)	
	)	



BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

The state appeals from the district court's order suppressing evidence found pursuant to a search of the passenger compartment of Petersen's vehicle and dismissing count I of the information charging Petersen with money laundering.

Statement of Facts and Course of Proceedings

Relevant facts as outlined by the district court are as follows:

> On March 14, 2011, Deputies Gorham and Moffett were conducting a "criminal interdiction" on I-90. During this interdiction they noticed a vehicle, driven by Defendant, which bore no front license plate. The deputies decided to pull the vehicle over. While approaching the vehicle to conduct the traffic stop, the officers observed that, while changing lanes to overtake a semi, Defendant used a two to three second signal when changing lanes. Additionally, when Defendant's vehicle traveled back into the slow lane of travel, after overtaking the semi, it "didn't leave a very safe distance in-between itself and the semi-truck", which officers also believed constituted an unsafe lane change. The officers then pulled the vehicle over.
>
> Upon approaching the Defendant, Deputy Gorham noted that he was friendly and talkative, possibly "overly friendly". The officer noticed that Defendant's hand was shaky. The officer also noticed a number of "criminal indicators", which are "seemingly innocent things to most people" but, "when taken in the totality of the circumstances . . . lead [an officer] to start to develop reasonable suspicion. First, the officer noticed the Defendant's car was very clean. He also noticed a 12 pack of Diet Pepsi, about half gone, sitting on the passenger seat. There were two cell phones in the vehicle, some paperwork, an air freshener, and one pair of jeans in the back seat. The officer said, alone, the clean car means that "[t]he guy's clean." But, the officer noted the cleanliness because "most people that travel long distances and go on long road trips, they'll throw their fast food wrappers and other stuff throughout the vehicle." The Diet Pepsi made the officer suspect that Defendant was on a long journey and needed caffeine

to stay alert and awake. The two cell phones interested the officer "because most people that traffic drugs, or sell drugs, or buy drugs will often use multiple cell phones to avoid detection . . ." The jeans interested the officer because "it just showed a – an initial lack of luggage. Most of the time people put their suitcases and stuff in the back seat rather than the trunk."

While Deputy Moffett ran Defendant's information, Deputy Gorham ordered Defendant out of the car while he issued a warning citation. The deputy then handed Defendant his documentation, and asked Defendant if he was "good to go." Defendant said that he was, shook the officers' hands, and then started back toward his car. Deputy Gorham then "engaged [Defendant] in casual conversation", asking him about the reason for his trip, what he did for a living, and so on. During this conversation, the officer noticed indicators that made the officer believe that Defendant was "under a high level of stress." At some point, Deputy Gorham asked for consent to search the trunk. The Defendant said "sure", and popped the trunk for the officers, and lifted the lid. Prior to opening the trunk, officers asked the Defendant whether he was in possession of a large amount of money, and the Defendant replied that he had $55,000.00 in his trunk. During the subsequent search of the trunk officers found one bag which, among other things, contained a large sum of money which was bound in thousand dollar stacks. The cash found in the trunk and on Defendant's person actually amounted to approximately $72,000.00. The officers that the packaging of the money was suspicious because the officers "run into people all the time that have valid reasons to carry this much money with them. . . and they never . . . package it that way . . . And they usually always have documentation of what I intend to do with this money, where I got it, so on, so forth."

Deputy Gorham asked the Defendant what he intended to do with the cash, and Defendant said he was going to Seattle to visit his girlfriend and to purchase a motor home. He told the officer that he travels with that much cash all of the time. Defendant said that this was his second trip to Seattle. Deputy Gorham found it suspicious that Defendant was headed to Seattle, because the officer knows Seattle to be a major distributor of marijuana.

(R., pp.201-203 (citations omitted).)

Officer Moffett then searched the passenger compartment of the vehicle where he found marijuana and the officers arrested Petersen. (Tr., p.28, L.12 – p.29, L.12.) Once arrested, Officer Gorham noticed Petersen "calmed down a lot" and "didn't shake anymore." (Tr., p.30, L.25.)

The state charged Petersen with money laundering, attempted destruction of evidence, misdemeanor possession of marijuana and possession of paraphernalia. (R., pp.86-88.) Petersen filed a motion to suppress claiming the "search and seizure and arrest by the officers was unlawful and without legal justification." (R., pp.98-99.) Petersen also filed a motion to dismiss the information charging him with money laundering and attempted destruction of evidence based his claim of an insufficiency of evidence presented at preliminary hearing to support a finding of probable cause. (R., pp.131-149.) Following a hearing, the district court took the matter under advisement and subsequently issued a memorandum decision and order granting Petersen's motion to dismiss on the basis that there was no probable cause present to search the passenger compartment of Petersen's vehicle and granting his motion to dismiss count I of the information charging Petersen with the offense of money laundering because it found "no evidence, only mere speculation" of a violation of the money laundering statute. (R., p.219, 225.)

The state appeals from the memorandum decision and order on defendant's motion to suppress and motion to dismiss.

ISSUES

1. Did the district court err in granting Petersen's suppression motion based on its conclusion that there was insufficient probable cause to believe incriminating evidence would be found in the passenger compartment of Petersen's car after evaluating the totality of the circumstances including the large amount of bundled cash found in the trunk considered in light of Petersen's demeanor?

2. Did the district court err when it concluded that the testimony presented during the preliminary hearing did not establish probable cause to believe Petersen committed the crime of money laundering?

ARGUMENTS

I.
The District Court Erred In Granting Petersen's Suppression Motion

A. Introduction

The district court suppressed the evidence seized pursuant to a search of the passenger compartment of Petersen's vehicle. The district court erred in determining that there was insufficient probable cause to believe there would be evidence of a crime found in the passenger compartment.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, ___, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004).

C. The District Court Erred In Granting Petersen's Suppression Motion Based On Its Finding That There Was Insufficient Probable Cause That Incriminating Evidence Would Be Located Within The Passenger Compartment Of Petersen's Vehicle

The Fourth Amendment prohibits unreasonable searches and seizures. "A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement." State v. Kerley, 134 Idaho 870, 873, 11 P.3d 489, 492 (Ct. App. 2000) (citing Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); see also State v. Ferreira, 133

Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999).) The automobile exception is a well-established exception to the warrant requirement. Colorado v. Bannister, 449 U.S. 1, 3 (1980); State v. Buti, 131 Idaho 793, 800, 964 P.2d 660, 667 (1998).

The "automobile exception" to the warrant requirement allows the police to search a vehicle without a warrant when there is probable cause to believe the vehicle contains contraband or evidence of a crime. Carroll v. United States, 267 U.S. 132 (1925); Arkansas v. Sanders, 442 U.S. 753, 760 (1979); State v. Buti, 131 Idaho 793, 964 P.2d 660 (1998); State v. Bottelson, 102 Idaho 90, 93, 625 P.2d 1093, 1096 (1981). The analysis of whether an officer had probable cause for an automobile search is whether, based on the objective facts, a magistrate would have issued a warrant under similar circumstances. State v. Murphy, 129 Idaho 861, 864, 934 P.2d 34, 37 (Ct. App. 1997); State v. Shepherd, 118 Idaho 121, 123, 795 P.2d 15, 17 (Ct. App. 1990). Determining the existence of probable cause is "a practical, common-sense decision whether, given all the circumstances ..., there is a fair probability that contraband or evidence of a crime will be found ...." Illinois v. Gates, 462 U.S. 213, 238 (1983). Probable cause does not require an actual showing of criminal activity, but only the "probability or substantial chance" of such activity. Id. at 244-45 n.13. A practical, nontechnical probability that incriminating evidence is involved is all that is required. Texas v. Brown, 460 U.S. 730, 742 (1983); United States v. Cortez, 449 U.S. 411, 418 (1981). The facts known to the officers must be judged in accordance with "the factual and practical considerations of everyday

life on which reasonable and prudent men, not legal technicians, act." Brinegar v. United States, 338 U.S. 160, 175 (1949). "If there is probable cause to believe a vehicle contains evidence of criminal activity, United States v. Ross, 456 U.S. 798, 820-21, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), authorizes a search of any area of the vehicle in which the evidence might be found." Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 1721 (2009).

The district court determined there was reasonable articulable suspicion to stop Petersen's vehicle based on his failure to "signal for five seconds prior to changing lanes" and his unsafe lane change. (R., pp.208-209.) It further concluded the police did not unconstitutionally extend the traffic stop when they terminated their questioning, and Petersen acknowledged he was "good to go" and began to leave prior to the police officers reinitiated contact and further questioning. (R., p.215.) The court next held Petersen's consent to search his trunk was voluntary. (R., p.217.) The district court, however, incorrectly concluded there was insufficient probable cause to search the passenger compartment of Petersen's vehicle.

Prior to the search of Petersen's vehicle, Officer Gorham noticed a number of things that, when considered together in light of the entire stop and discovery of bundled money in the trunk, were possible indicators of criminal activity: Petersen's hands were shaking "quite noticeably" (Tr., p.19, Ls.17-18), there was a half-empty 12-pack container of Diet Pepsi on the passenger seat next to Petersen (Tr., p.20, L.23 – p.21, L.10), the officer saw two cell phones on the passenger seat (Tr., p.21, Ls.11-13), and there an air freshener in the center

console of the clean car (Tr., p.21, Ls.16-18). The officer testified that taken alone, none of the above observations are necessarily of concern, however,

> when you are seeing that, the way the vehicle was set up, the nervousness, and the body indicators, and take all the totally [sic] of the circumstances, and put them into one, you start to develop reasonable suspicion that something else is going on other than this person is being pulled over for a traffic stop.

(Tr., p.22., Ls.15-20.) Additionally, the car Petersen was driving was "a newly registered vehicle" and Petersen was on his way to his second trip to Seattle from Minnesota by way of Montana to meet a "lady friend of his." (Tr., p.23, Ls.11-23.) The police officers discovered a large sum of money in a grocery bag inside of a duffle bag located in the trunk, bundled in a manner consistent with the bundling of drug proceeds. (Tr., p.27, Ls.7-16.) Although unemployed for the previous four years, Petersen claimed to always travel with that much cash and then remembered he was going to purchase a motor home in Seattle. (Tr., p.27, L.21 – p.28, L.10.) He claimed to have such cash on hand because he previously owned a used car dealership that dealt in cash. (Tr., p.30, Ls.19-23.)

The district court incorrectly concluded there was insufficient probable cause that incriminating evidence of money laundering and/or drug trafficking would be found in the car based on the discovery of the large amount of money in Petersen's trunk when viewed in light of the totality of the circumstances. (R., p.219.) The totality of the circumstances need not point to the existence of evidence of a specific crime. In State v. Newman, 149 Idaho 596, 601, 237 P.3.d 1222, 1227 (Ct. App. 2010), the Court of Appeals found probable cause existed to believe evidence of a crime would be found in Newman's vehicle

based on the "totality of the circumstances and the objective facts presented to the officers":

> in order to establish that probable cause existed to search Newman's vehicle, the state was not required to show that the officers knew whether the purpose of luring the victim to the park was to commit the crime of battery, assault, theft by trick, rape, kidnapping, murder, robbery, or any number of other possible crimes. All that was required was a showing that probable cause existed to believe that evidence of criminal activity could be found in the vehicle.

Here, looking at the totality of the circumstances, the officers had probable cause based on Petersen's demeanor, the presence of two cell phone, the fact he was driving a newly registered vehicle, had made multiple trips to Seattle from Minnesota and back, had not been recently employed and had a large amount of undocumented cash bundled in a manner consistent with being a drug dealer that they would find evidence of a crime in the passenger compartment of Petersen's vehicle. Based on the totality of the circumstances and the objective facts presented to the officers, probable cause existed to believe that evidence of a crime, relating to drugs and cash, would be found in Petersen's car.

Because there was probable cause to believe there was evidence of criminal behavior in the passenger compartment of Petersen's vehicle, the district court erred in granting his motion to suppress.

II.
The District Court Erred When It Concluded That The Testimony Presented During The Preliminary Hearing Did Not Establish Probable Cause To Believe That Petersen Committed The Offense Of Money Laundering

A. Introduction

The district court dismissed the count of money laundering, finding

> the magistrate court abused its discretion in binding Defendant over on the charge of money laundering, and this charge must be dismissed, because there is no evidence, only mere speculation, of any potential violation of chapter 27, title 37, Idaho Code.

(R., p.225.) Because the record shows the existence of sufficient probable cause to believe Petersen committed the crime of money laundering, the district court erred in dismissing count I.

B. Standard Of Review

"A magistrate's finding of probable cause that a defendant has committed a public offense should be overturned only upon a showing that the magistrate abused its discretion." State v. Pole, 139 Idaho 370, 372, 79 P.3d 729, 731 (Ct. App. 2003) (citing State v. Gibson, 106 Idaho 54, 57, 675 P.2d 33, 36 (1983); State v. Phelps, 131 Idaho 249, 251, 953 P.2d 999, 1001 (Ct. App.1998).)

C. The Testimony Presented At The Preliminary Hearing Provided Substantial Evidence That Petersen Committed The Offense Of Money Laundering

The state is not required to prove a defendant guilty beyond reasonable doubt at a preliminary hearing. Pole, 139 Idaho at 372, 79 P.3d at 731. "Rather, the state need only show that a crime was committed and that there is probable cause to believe the accused committed it." Id. (citation omitted.)

The state charged Petersen with money laundering in violation of Idaho Code §§ 18-8201, 18-7804 as follows:

> That the defendant, CONRAD WALTER PETERSEN, on or about the 14th day of March, 2011, in Kootenai County, Idaho, did unlawfully and knowingly and/ or intentionally conceal and/ or transport items of value, to wit: $71,505.00, that he knew was intended to be used to commit or further a pattern of racketeering

> activity, as defined in Idaho Code § 18-7803(d), to wit: possession, distribution, manufacture, trafficking, and/or delivery of controlled substances, or a violation of the provisions of Chapter 27, Title 3 7, Idaho Code; and/ or that the Defendant did knowingly and/or did intentionally plan, organize, initiate, finance, manage, supervise, and/or facilitate the transportation or transfer of proceeds, known by him to be derived from a pattern of racketeering activity, as defined in Idaho Code § 18-7803(d), to wit: possession, distribution, manufacture, trafficking, and/or delivery of controlled substances, or a violation of the provisions of Chapter 27, Title 37, Idaho Code.

(R., p.87.) The statute prohibiting money laundering provides in relevant part:

> It is unlawful for any person to knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport, or make available anything of value that the person knows is intended to be used to commit or further a pattern of racketeering activity as defined in section 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho Code.

I.C. § 18-8201 (1). "Racketeering" is "any act which is chargeable or indictable under" a number of specified crimes including the possession, distribution, manufacture, trafficking and/or delivery of a controlled substance. I.C. §§ 18-7803(a)(19); 37-2732.

Here, the district court found there was

> substantial evidence that [Petersen] knowingly transported and /or concealed something of value, but there [were] no facts in the record, nor permissible inferences which may be drawn from those facts, which would indicate that [Petersen] knew or intended the money be used to commit a violation of chapter 27, title 37, Idaho Code.

(R., p.224.) That conclusion is inconsistent with the evidence provided at the preliminary hearing. The necessary proof required in this instance was that "under any reasonable view of the evidence, including permissible inferences, it appear[ed] likely that [the offense of money laundering] occurred and that

[Petersen] committed it." Pole, 139 Idaho at 373, 79 P.3d at 732 (citation omitted). A review of the record supports the state's position that burden was met.

At preliminary hearing, the officers testified that there was a large amount of money found as part of the consensual search of Petersen's trunk. Officers located a duffel bag in the trunk containing a grocery sack with thousand dollar stacks of money wrapped in rubber bands in a manner consistent with how drug dealers wrap their money. (PH Tr., p.11, L.24 – p.12, L.16.) The money was undocumented and the officer considered it "suspicious." (PH Tr., p.12, Ls.17-24.) Although Peterson indicated there was $55,000 in the grocery bag (PH Tr., p.12, L.10), the actual amount was over $72,000 (PH Tr., p.51, Ls.22-23). Although not employed for the past four years, Petersen advised the officer he used to run a used car dealership which operated in cash and he "travels with that much cash all the time." (PH Tr., p.13, Ls.7-19.) When asked what he intended to do with so much cash, Petersen indicated he "was going to Seattle to buy a motor home." (PH Tr., p.13, Ls.4-6.) He also told officers, however, that his trip to Seattle was his second trip to visit his girlfriend. (PH Tr., p.13, L.20 – p. 14, L.7.) Officer Moffett testified that he knew of Seattle as a "major distributor of marijuana" (PH Tr., p.27, Ls.18-19) and that it was common for someone from the east to buy drugs cheap on the west coast and take them back to make a "big profit" (PH Tr., p.28, L.5 – p.29, L.5). There was additionally a small amount of marijuana located in Petersen's vehicle (PH Tr., p.41, Ls.8-19) as well as a receipt for the purchase of over $400 worth of fertilizers and growing methods

from a store in Minneapolis, Minnesota (PH Tr., p.61, L.8 – p.62, L.6) and a diagram on how to grow marijuana (PH Tr., p.60, Ls.14-15). Petersen's vehicle showed a recent temporary registration out of Montana although he was from Minnesota and his vehicle odometer showed a high mileage since the registration. (Tr., p.56, Ls.8 – p.57, L.1, p.62, L.24 – p. 63, L.2.) Contrary to the district court's holding, it is reasonable to conclude based on the evidence presented at preliminary hearing that not only was Petersen concealing and/or transporting this large amount of undocumented cash, but his purpose was to use the money to develop or continue operation of a drug trafficking enterprise.

Because there the record shows the existence of sufficient probable cause to believe Petersen committed the crime of money laundering, the district court erred in dismissing count I.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order suppressing evidence and dismissing count I of the information.

DATED this 30th day of November 2012.

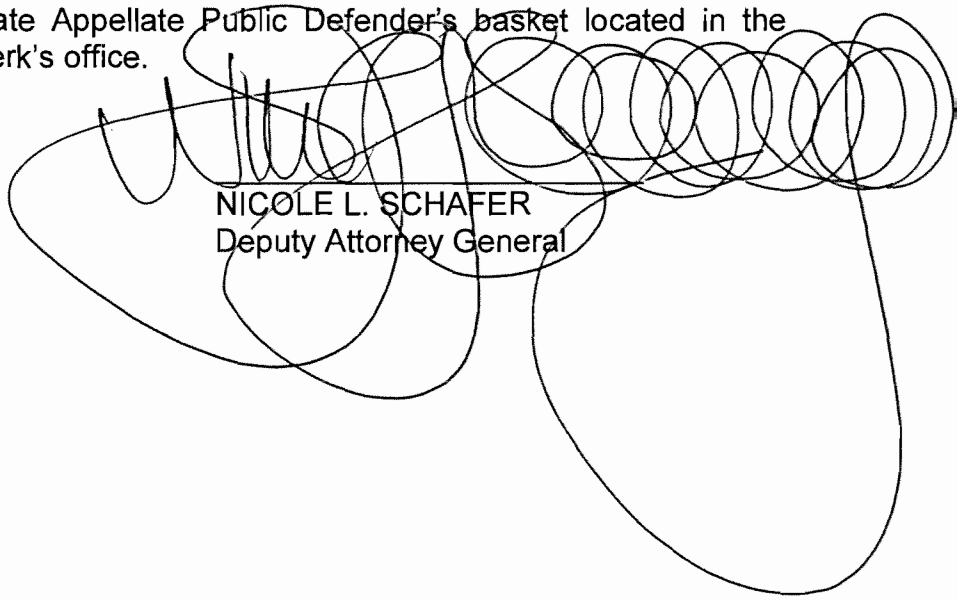
NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of November 2012, served a true and correct copy of the attached BRIEF OF APPELLANT by causing a copy addressed to:

SARA B. THOMAS
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



NICOLE L. SCHAFER
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NLS/pm